UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION (DETROIT)

In re:	Case No. 16-56980
Jerry A. Arnoff Alicia K. Arnoff,	Chapter 7
	Honorable Mark A. Randon
Debtors. _____/	

ORDER DENYING ANTHONY DAVIDE'S MOTION FOR RECONSIDERATION

I. INTRODUCTION

The Trustee filed a motion to conduct a private sale of Debtor Wife's four carat, marquise-cut diamond ring to Edmund T. Ahee Jewelers for $16,000.00. Anthony Davide objected to the sale, arguing the Court should require the Trustee to accept his higher offer for the ring or conduct an auction. The Trustee says Mr. Davide lacks standing to object, and his offer of $16,250.00 would not provide any additional benefit to the bankruptcy estate.

The Court held a telephonic hearing on December 7, 2020. The Trustee appeared; Mr. Davide, a Florida resident, did not. He mistakenly believed Michigan was in the Central time zone. Therefore, he called-in one hour after the Court heard argument from the Trustee and granted his motion. Mr. Davide's motion for reconsideration is pending. Assuming Mr. Davide has standing to challenge the sale, for the reasons stated on the record and those indicated below, his motion is **DENIED**.

II. APPLICABLE LAW AND ANALYSIS

A. Motion for Reconsideration

Local Bankruptcy Rule 9024-1(a)(3) provides:

> Generally, and without restricting the discretion of the court, a motion for reconsideration that merely presents the same issues ruled upon by the court, either expressly or by reasonable implication, will not be granted. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

Palpable defect is established when the moving party can point to: "(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Visteon Corp. v. Collins & Aikman Corp. (In re Collins & Aikman Corp.)*, 417 B.R. 449, 454 (E.D. Mich. 2009) (quoting *Henderson v. Walled Lake Consolidated Schools*, 469 F.3d 479, 496 (6th Cir. 2006)).

A Chapter 7 Trustee has a duty to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest[.]" 11 U.S.C. § 704(a)(1). When liquidating a debtor's assets, "[t]he trustee, after notice and a hearing, may . . . sell . . . other than in the ordinary course of business, property of the estate[.]" 11 U.S. C. § 363(b)(1).

A trustee's sale motion receives the Court's approval "when the trustee has demonstrated sound business judgment in requesting the sale." *In re Scimeca Foundation, Inc.*, 497 B.R. 753, 771 (Bankr. E.D. Pa. 2013). The Court considers whether business judgment was exercised using three factors: "(1) any improper or bad faith motive, (2) price is fair and the negotiations or bidding occurred at arm's length, (3) adequate procedure, including proper exposure to the market and accurate and reasonable notice to all parties in interest." *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 514 (Bankr N.D. Ala. 2002)). In exercising sound business judgment, a trustee's

assessment in carrying out "a sale or accepting a bid 'is entitled to respect and great deference from the Court[.]'" *In re Scimeca*, 497 B.R. at 771.

There was no palpable defect. The sale to Ahee Jewelers was an arms-length transaction, the Trustee made reasonable efforts to find a buyer for the ring for over a year, and he obtained a reasonable price. The Trustee was not required to hold an auction for the sale of the ring under Bankruptcy Rule 6004(f).

B. Relief from a Judgment or Order

If the Court construes Mr. Davide's motion under Federal Rule of Civil Procedure 60(b)(1), it reaches the same outcome. Under Federal Rule of Civil Procedure 60(b)(1), "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgement, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect[.]" And, "the moving party must demonstrate both the existence of mistake, inadvertence, surprise, or excusable neglect and a meritorious claim or defense." *Merriweather v. Wilkinson*, 83 F. App'x. 62, 63 (6th Cir. 2003) (citing *Marshall v. Monroe & Sons, Inc.*, 615 F.2d 1156, 1160 (6th Cir. 1980)). "[C]arelessness . . . on the part of the moving party will [not] justify relief[.]" *Merriweather*, 83 F. App'x at 63 (citing *FHC Equities, L.L.C. v. MBL Life Assurance Corp.*, 188 F.3d 678, 685-87 (6th Cir. 1999)); *Saxion v. Titan-C-Mfg., Inc.*, 86 F.3d 553, 558 n.1 (6th Cir. 1996).

The Court considered the four-factor equitable test in *Pioneer*, including: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). It concludes that granting Mr. Davide's motion would be prejudicial to the Debtors. Although the

Court accepts Mr. Davide's explanation for missing the hearing, Mr. Davide does not dispute the Trustee's assertion that his offer was only $250.00 more than the accepted offer.[1] In addition, holding another hearing would add to the administrative expenses charged to the bankruptcy estate, and the Ahee offer is time sensitive.

III. CONCLUSION

For the reasons stated at the hearing and the reasons outlined in this order, Mr. Davide's motion for reconsideration is **DENIED**.

IT IS ORDERED.

Signed on December 9, 2020

/s/ Mark A. Randon

Mark A. Randon
United States Bankruptcy Judge

[1] Even if Mr. Davide is willing to offer more than $16, 250.00, the Trustee is not required to haggle with him, when the outcome would not materially increase the value of the estate, considering the additional administrative expenses. And, when the Court has determined the Trustee exercised sound business judgment in accepting the Ahee offer.